

REMARKS

The Examiner has rejected Claims 1-6, 8-9, 11-18, 20-21, 23-30, 32-33 and 35-36 under 35 U.S.C. 103(a) as being unpatentable over Waldin (U.S. Patent No. 6,094,731) in view of Tamaru (U.S. Patent No. 4,788,637) in further view of Hoene (U.S. Patent No. 2002/0199116). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove to each of the independent claims.

With respect to each of the independent claims, the Examiner has relied on paragraphs [0025] and [0036] in Hoene to make a prior art showing of applicant's claimed "change logging logic operable to log changes to said update status field to create a change history in an update status tracking database to enable identification of weaknesses within update status management based on the change history" (see the same or similar, but not identical language in each of the independent claims).

Applicant notes that such excerpts only teach "track[ing] virus susceptible client computers, such as those without an up-to-date virus scan." Applicant respectfully asserts that simply tracking computers without updated virus scans, does not meet applicant's specific claim language. In particular, applicant claims "creat[ing] a change history in an update status tracking database" where such updates relate to a malware scanner, and not merely to a computer in which an updated virus scan has been performed, as in Hoene. Furthermore, applicant claims that such change history "enable[s] identification of weaknesses within update status management," whereas Hoene only teaches tracking virus susceptible computers.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the

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claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. Nevertheless, despite such paramount deficiencies and in the spirit of expediting the prosecution of the present application, applicant has substantially incorporated the subject matter of Claims 6 and 8 et al. into each of the independent claims.

With respect to the subject matter of Claim 6 et al., presently incorporated into each of the independent claims, the Examiner has relied on item 23 of Figure 2 and Col. 2, line 65-Col. 3, lines 7 in Tamaru to make a prior art showing of applicant's claimed technique "wherein, if said current malware scanner has a less out-of-date update status than said previous malware scanner, then said update status field associated with said computer file is changed to correspond to said current malware scanner."

Applicant respectfully asserts that such excerpt simply teaches a packet that includes a version number. Clearly, a packet with a version number does not meet any sort of "update status field associated with said computer file [that] is changed to correspond to said current malware scanner," as claimed by applicant. In fact, applicant notes that Tamaru only discloses that the packet is utilized to determine when the version for the local station is older than the version for the remote station, in which case a latest version is received at the local station from the remote station (see Abstract). Thus, Tamaru does not teach that an "update status field associated with...[a] computer file is changed," in the manner claimed by applicant (emphasis added).

With respect to the subject matter of Claim 8 et al., presently incorporated into each of the independent claims, the Examiner has relied on item 3 of Figure 1 in Tamaru to make a prior art showing of applicant's claimed technique "wherein said update status

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alert includes one or more of: (i) a user alert issued on whichever one of said current malware scanner and said previous malware scanner has a most out-of-date update status; and (ii) an administrator alert issued to an administrator of whichever one of said current malware scanner and said previous malware scanner has a most out-of-date update status."

Applicant respectfully asserts that item 3 in Figure 1 only depicts a controller, where such controller is utilized for "requesting to transfer the newer version" (see Col. 4, lines 23-25). The Examiner has specifically argued that the administrator can be the controller of the stations. However, applicant notes that Tamaru teaches that the controller "performs a predetermined control in accordance with the version comparison result." Thus, since the controller only performs predetermined actions, such controller cannot be an administrator, as the Examiner contends.

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance or a proper prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

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In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P495/01.018.01).

Respectfully submitted,
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